

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

AUG 14 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-02716

COUNSEL: NONE

HEARING DESIRED: NO

[REDACTED]  
[REDACTED]

Applicant requests restoration to his highest grade held of senior master sergeant (E-8) prior to his conviction by Special Court Martial on 17 December 1986. Applicant's submission is at Exhibit A.

The Defense Finance, and Accounting Service-Denver Center (DFAS-DE) has advised that, although the applicant was retired in the grade of master sergeant, his retired pay is being computed on the basis of the pay grade of senior master sergeant (E-8).

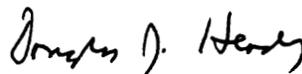
The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board, Messrs. Douglas J. Heady, Joseph G. Diamond, and Henry Romo Jr., considered this application on 11 August 1998, in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.



DOUGLAS J. HEADY  
Panel Chair

Exhibits:

- B. Available Master Personnel Records
- C. Advisory Opinions
- D. SAF/MIBR Ltr Forwarding Advisory Opinions



DEPARTMENT OF THE AIR FORCE  
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

28 Oct 1997

MEMORANDUM FOR AFBCMR

FROM: AFLSNJAJM (Capt Pinjuh)  
112 Luke Avenue, Room 343  
Bolling Air Force Base, DC 20332-8000

SUBJECT: Correction of Military Records of [REDACTED]

**Applicant's request:** In an application dated 6 September 1997 and received on 12 September 1997, the applicant requests to be restored to his highest rank held (E-8) prior to his conviction by Special Court-Martial on 17 December 1986. The applicant retired from active duty on 30 June 1987. In his application, the applicant states that he discovered the alleged error in January 1987. Accordingly, the application was not submitted within the three-year limitation provided by 10 U.S.C. 1552(b) and is untimely. The applicant did not explain the delay in filing his request.

**Facts of military justice action:** On 17 December 1986 at [REDACTED] AFB, [REDACTED], then SMSgt [REDACTED] pled guilty at a Special Court-Martial to one specification of larceny of property of a value of more than \$100.00 in violation of Article 121, UCMJ. He was sentenced by the military judge to a reduction to E-7 and a reprimand. The convening authority approved the finding of guilty and the sentence on 14 January 1987. On 20 May 1987, the SAF determined pursuant to Section 8964, Title 10, United States Code, that the applicant did not serve satisfactorily in the highest grade that he held while on active duty (E-8). Therefore, on 21 May 1987 the applicant was denied advancement on the retired list. On 30 June 1987, the applicant retired from active duty as an E-7 and received an honorable service characterization.

**Applicant's contentions:** At the time of his court-martial, the applicant had completed over 26 years of active duty. The applicant asks to be restored to his highest rank held (E-8) prior to his conviction by Special Court-Martial on 17 December 1986. He does not request any back pay. He states that "justice has been served and my family and I have suffered enough humiliation and financial loss these last eleven years." He is currently unable to work due to a stroke. He states that "the restoration of rank would show me that I am forgiven by the USAF." The applicant has not submitted any evidence to support his request.

**Discussion:** At trial, the applicant's entire record was provided to the military judge for consideration during sentencing. The maximum punishment for the applicant's offense was a BCD, confinement for 6 months, a reduction to E-1, and forfeiture of 2/3

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pay per month for 6 months. After considering the record for his entire career, the military judge saw fit to sentence the applicant to a reduction to E-7 and a reprimand for his crimes. The court's decision is well-within legal parameters and supported by the applicant's plea of guilty and the evidence of record.

The applicant's court-martial was properly convened and had jurisdiction over the applicant and the offense tried. The specification stated an offense under the UCMJ. Knowing that he was approaching retirement, the applicant jeopardized his military career and retirement pay by shoplifting over \$100.00 worth of Goebel figurines. Considering the available maximum punishment for his crime, the judge displayed tremendous leniency in determining an appropriate punishment for the applicant. Additionally, the convening authority considered the results of the applicant's court-martial during clemency and decided to approve his sentence. At the time of the offense, the applicant was a SMSgt with over 26 years of service. His crime reflected a vast departure from the maturity and leadership expected of a senior NCO. The decision of the court and the convening authority is appropriate.

Moreover, the SAF made a grade determination at the time of the applicant's retirement and concluded that he did not serve satisfactorily in the grade of SMSgt and approved his retirement at the lower grade of MSgt. In light of the crime committed by the applicant as a SMSgt, an upgrade in his retirement rank is not warranted. The applicant simply has not provided any evidence to the Board which would justify granting his request.

Recommendation: The applicant's request is untimely and should be denied for failing to comply with the statute of limitations. Further, after review of the available records, I conclude there are no legal errors requiring corrective action and granting the applicant's request is not warranted. The applicant's court-martial and resulting punishment were properly executed and legally sufficient. I recommend that the applicant's request be denied.



LOREN S. PERLSTEIN

Associate Chief, Military Justice Division  
Air Force Legal Services Agency

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS

18 NOV 1997

MEMORANDUM FOR AFPC/DPPRR  
AFBCMR  
IN TURN

FROM: HQ AFPC/DPPPWB  
550 C Street West, Ste 09  
Randolph AFB TX 78150-4711

SUBJECT: Application for Correction of Military Records - ~~\_\_\_\_\_~~

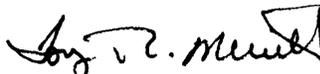
Requested Action. The applicant is requesting restoration to the highest rank held, SMSgt (E-8), prior to his Special Court- Martial

Reason for Request. The applicant feels that justice has been served and that restoration of his previous grade would show ~~him~~ that he has been forgiven by the USAF. Also, since he is now unable to work, he states restoration of his previous grade would provide a better standard of living for him and his family.

Facts. See AFLSA/JAJM Memorandum, 28 Oct 97.

Discussion. The applicant was promoted to SMSgt effective and with a DOR of 1 Jul 85. On 17 Dec 86 he was arraigned and tried before a Special Court-Martial and pled guilty to the charge of stealing Goebel figurines of a value of more than \$100.00. He was reprimanded and reduced to the grade of MSgt (E-7) effective 14 Jan 87. AFLSNJAJM has addressed the appropriateness of restoration of the applicant's grade and recommended denial. We defer to their recommendation. Again, the applicant's DOR and effective date to SMSgt was 1 Jul 85.

Recommendation. We defer to the recommendation of AFLSNJAJM.

  
TONY R. MERRITT  
Chief Inquiries/AFBCMR Section  
Enlisted Promotion Branch

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS

9 Dec 97

MEMORANDUM FOR AFBCMR

**FROM:** HQ AFPC/DPPRR  
550 C Street West, Suite 11  
Randolph AFB TX 78150-4713

**SUBJECT:** Application for Correction of Military Records [REDACTED]

Requested Action. The applicant is requesting restoration to the highest rank held of senior master sergeant (**E-8**) prior to his conviction by Special Court-Martial on 17 December 1986.

Basis for Request. Applicant states "I feel justice has been served and my family and I have suffered enough humiliation and financial loss through these eleven years. I am not asking for any back pay, only to have my rank restored which I hope will give me back a measure of my self worth and reflect a more accurate reflection of my military career."

Discussion.

a. On 17 Dec 86 at [REDACTED] AFB, [REDACTED] applicant pled guilty at a Special Court-Martial to one **specification of larceny of property** of a value of more than \$100.00 in violation of Article 121, UCMJ. He was sentenced by the military judge to a reduction to master sergeant (**E-7**) and a reprimand. The convening authority approved the finding of guilty and the sentence on 14 Jan 87. On 20 May 87, the SAF made a determination that the highest grade the applicant satisfactorily held on active duty for advancement purposes was master sergeant (**E-7**) (Atch 1).

b. At the time of his court-martial, the applicant had completed over 26 years of active duty. Under the provisions of Comptroller General Decision (CG-B187683), 23 June 1977 (Atch 2) and Section 1401a(f), Title 10, United States Code (Atch 3), we believe applicant may be entitled to receive retired pay at his former grade of senior master sergeant (**E-8**). We defer to DFAS-CL for their comments and recommendation regarding whether or not applicant is entitled to receive retired pay at his former grade of senior master sergeant (**E-8**).

c. **This** may be in conflict with the SAF grade determination completed 20 May 87 in accordance with Sections 8964 and 1371, Title 10, U.S.C. However, in those cases where the Secretary has ruled that service in the higher grade was not satisfactory for advancement or disability retirement, a member may still be entitled to retired pay in their higher grade, regardless of the grade/rank they actually hold.

d. The applicant applied for retirement to be effective 1 Jul 87 (Atch 4). Section 8961, Title 10, U.S.C., (Atch 5) states: "Unless entitled to a higher retired grade

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under some other provision of law a regular or reserve of the Air Force who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.” Again, based on the Comptroller General Decision and Section 1401a(f), Title 10, U.S.C., applicant may be entitled to receive retired pay at the grade of senior master sergeant (E-8) instead of master sergeant (E-7).

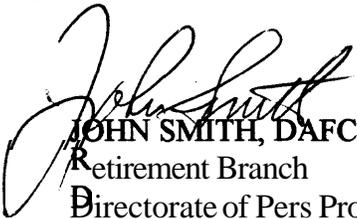
e. As for the applicant’s request for restoration to the highest rank held senior master sergeant (E-8), there are no provision to grant this request. There is an advancement law (Section 8964, Title 10, U.S.C.) that applied to this applicant. This law allows for advancement of a regular enlisted member to the *highest grade satisfactorily held on active duty* when active duty and duty on the retired reserve list totals 30 years. However, the Secretary made a determination on 20 May 87, that applicant did not serve satisfactorily in any higher grade than master sergeant (E-7) (Atch 1).

Recommendation. Denial.

a. In accordance with the provisions of law, the applicant was correctly retired in the grade of master sergeant, which was the grade he held on the date of his retirement.

b. Applicant’s grade determination for advancement purposes was accomplished in accordance with the law and procedures on 20 May 87 and it was determined at that time that the highest grade served in satisfactorily was master sergeant (E-7).

c. However, there is a statement on applicant’s retirement orders (Atch 6) that states: “Held grade of senior master sergeant (E-8) from 1 July 1985 through 13 January 1987. CG-B187683, 23 June 1977 may apply.” DFAS-CL should provide comments and recommendation concerning the possible entitlement to retired pay as a senior master sergeant (E-8).

  
JOHN SMITH, DAFC  
Retirement Branch  
Directorate of Pers Program Management

Attachments

1. SAF Memorandum, 20 May 87
2. CG-B187683, 23 Jun 77
3. Section 1401a(f), Title 10, U.S.C.
4. AF Form 1160
5. Section 8961, Title 10, U.S.C.
6. Retirement Orders

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